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Paper No. 32
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JONATHAN TIEN and DAVID R. MARBLE
Junior Party
(Patent 5,687,722)¹

v.

MOHAMED K. DIAB, ESMAIEL KIANI-AZRBAY JANY,
IBRAHIM M. ELFADEL, REX J. McCARTHY,
WALTER M. WEBER and ROBERT A. SMITH
Senior Party
(Application 09/195,791)²

Patent Interference No. 105,478

Before LEE, LANE and MOORE, Administrative Patent Judge.

LEE, Administrative Patent Judge.

1
2

Judgment -- Request for Adverse -- Bd. R. 127(b)

¹ Based on Application 08/507,754, filed July 26, 1995. Accorded the benefit of Application 08/442,834, filed May 17, 1995. The real party in interest is SpaceLabs Medical Inc., SpaceLabs Healthcare, Inc. and OSI Systems, Inc.

² Filed November 17, 1998. Accorded the benefit of Application 08/859,837, filed May 16, 1997; Application 08/320,154, filed October 7, 1994; and Application 08/132,812, filed October 6, 1993. The real party in interest is Masimo Corporation and Comerica Bank-California.

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1 On October 31, 2006, junior party conceded priority and requested entry of adverse
2 judgment with respect to the subject matter of Count 1. (Paper No. 31) In a telephone
3 conference call held on November 14, 2006, counsel for party Tien indicated that Tien is no
4 longer interested in filing a motion for no interference-in-fact and a motion to designate its
5 claims 1-10, 12, 13, 15 and 18-28 as not corresponding to the count. The request is granted.

6 It is

7 **ORDERED** that judgment on priority as to the subject matter of Count 1 is herein
8 entered against junior party JONATHAN TIEN;

9 **FURTHER ORDERED** that junior party JONATHAN TIEN is not entitled to claims
10 1-28 of its involved Patent No. 5,687,722;

11 **FURTHER ORDERED** that if there is a settlement agreement, the parties should note
12 the requirements of 35 U.S.C. § 135(c) and Bd. Rule 205; and

13 **FURTHER ORDERED** that a copy of this judgment be placed in the respective
14 involved application or patent of the parties.

/ss/ Jameson Lee
JAMESON LEE
Administrative Patent Judge

/ss/ Sally G. Lane
SALLY G. LANE
Administrative Patent Judge

/ss/ James T. Moore
JAMES T. MOORE
Administrative Patent Judge

Interference No. 105,478
Tien v. Diab

By Electronic Transmission:

Attorney for Party Tien:

Paul T. Meiklejohn
Edward W. Bulchis
Dorsey & Whitney LLP
1420 Fifth Avenue, Suite 3400
Seattle, Washington 98101
Meiklejohn.Paul@Dorsey.com
Bulchis.Ed@Dorsey.com

Attorney for Party Diab:

Brenton R. Babcock
Irfan A. Lateef
Salima A. Merani
Jarom D. Kesler
KNOBBE, MARTENS, OLSON & BEAR
brent.babcock@kmob.com
irfan.lateef@kmob.com
salima.merani@kmob.com
jarom.kesler@kmob.com